

and effective as of the date it is accepted and signed by the ETA certifying officer. Such Attestation is valid until the date that is the later of the end of the 12-month period beginning on the date of acceptance for filing with the Secretary, or the end of the period of admission (under INA section 101(a)(15)(H)(i)(c)) of the last alien with respect to whose admission the Attestation was applied, unless the Attestation is suspended or invalidated earlier than such date pursuant to § 655.1132.

**§ 655.1132 When will the Department suspend or invalidate an approved Attestation?**

(a) Suspension or invalidation of an Attestation may result where: the facility's check for the filing fee is not honored by a financial institution; a Board of Alien Labor Certification Appeals (BALCA) decision reverses an ETA certification of the Attestation; ETA finds that it made an error in its review and certification of the Attestation; an enforcement proceeding has finally determined that the facility failed to meet a condition attested to, or that there was a misrepresentation of material fact in an Attestation; the facility has failed to pay civil money penalties and/or failed to satisfy a remedy assessed by the Wage and Hour Administrator, where that penalty or remedy assessment has become the final agency action. If an Attestation is suspended or invalidated, ETA will notify INS.

(b) *BALCA decision or final agency action in an enforcement proceeding.* If an Attestation is suspended or invalidated as a result of a BALCA decision overruling an ETA acceptance of the Attestation for filing, or is suspended or invalidated as a result of an enforcement action by the Administrator under subpart M of this part, such suspension or invalidation may not be separately appealed, but shall be merged with appeals on the underlying matter.

(c) *ETA action.* If, after accepting an Attestation for filing, ETA discovers that it erroneously accepted that Attestation for filing and, as a result, ETA suspends or invalidates that acceptance, the facility may appeal such suspension or invalidation under § 655.1135 as if that suspension or invali-

dation were a decision to reject the Attestation for filing.

(d) A facility must comply with the terms of its Attestation, even if such Attestation is suspended, invalidated or expired, as long as any H-1C nurse is at the facility, unless the Attestation is superseded by a subsequent Attestation accepted for filing by ETA.

**§ 655.1135 What appeals procedures are available concerning ETA's actions on a facility's Attestation?**

(a) *Appeals of acceptances or rejections.* Any interested party may appeal ETA's acceptance or rejection of an Attestation submitted by a facility for filing. However, such an appeal shall be limited to ETA's determination on one or more of the attestation elements for which ETA conducts a substantive review (as described in § 655.1130(a)). Such appeal must be filed no later than 30 days after the date of the acceptance or rejection, and will be considered under the procedures set forth at paragraphs (d) and (f) of this section.

(b) *Appeal of invalidation or suspension.* An interested party may appeal ETA's invalidation or suspension of a filed Attestation due to a discovery by ETA that it made an error in its review of the Attestation, as described in § 655.1132.

(c) *Parties to the appeal.* In the case of an appeal of an acceptance, the facility will be a party to the appeal; in the case of the appeal of a rejection, invalidation, or suspension, the collective bargaining representative (if any) representing nurses at the facility shall be a party to the appeal. Appeals shall be in writing; shall set forth the grounds for the appeal; shall state if *de novo* consideration by BALCA is requested; and shall be mailed by certified mail within 30 calendar days of the date of the action from which the appeal is taken (*i.e.*, the acceptance, rejection, suspension or invalidation of the Attestation).

(d) *Where to file appeals.* Appeals made under this section must be in writing and must be mailed by certified mail to: Director, Office of Workforce Security, Employment Training Administration, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210.